Chang Ching Chuen & Ors v Aik Ming (M) Sdn Bhd & Ors (Pekan Nenas Industries Sdn Bhd, Intervener)

HIGH COURT (JOHOR BAHRU) — CIVIL SUIT NO 22-120 OF 1991
HAIDAR J
16 DECEMBER 1994

Companies and Corporations *— Irregularities in proceedings — Defective notice — Power to cure — Meeting and resolutions invalid — Resolutions prejudicial to plaintiffs — Whether court will exercise power to validate resolutions — Companies Act 1965 s 355*

Companies and Corporations *— Shares — Rectification of register — Validity of share transfers — Resolution to transfer shares declared invalid — Register to be rectified to original status quo of shareholding*

Companies and Corporations *— Injunction — Sale of company's land pursuant to invalid resolution — Injunction granted to prevent transfer — Application by purchaser to set aside injunction — Whether purchaser a bona fide purchaser*

Contract *— Sale and purchase of land — Bona fide purchaser — Sale pursuant to invalid resolution of company's board of directors — Whether sale valid — Whether purchaser a bona fide purchaser*

The first defendant ('the company') was incorporated as a family company in 1962 with its registered office in Sibu, Sarawak. It has an authorized capital of RM2.5m with 25,000 shares of RM100 each and owns six pieces of land ('the land') in the mukim of Jeram Batu, district of Pontian. The first plaintiff and the second defendant were the initial subscribers of the company, they being husband and wife, respectively. The third, fourth, fifth, sixth, seventh and eighth defendants are the children of the first plaintiff and the second defendant. The ninth defendant is the wife of the fourth defendant. Rahimah bte Dollah ('the second plaintiff') is the second wife of the first plaintiff who married her according to Muslim rites on 26 May 1990. The third and fourth plaintiffs are the brother and sister of the first plaintiff, respectively. The lands originally belonged to the first plaintiff who in 1973 transferred them to the company. Disputes arose in early 1990 between the first plaintiff and the second to eighth defendants following the first plaintiff's involvement and subsequent marriage to the second plaintiff. At a board meeting held on 17 April 1990, the defendants passed a resolution declaring the share certificates belonging to the second plaintiff null and void and approved the transfer of shares to the ninth defendant. The board of directors also passed a resolution on 26 May 1990 authorizing the sale of the land. Subsequently, the land was sold for RM4.8m to Pekan Nenas Industries Sdn Bhd ('the intervener'). However, the transfer of the lands could not be effected as the first plaintiff successfully obtained an interim injunction against the transfer.

The plaintiffs brought this suit seeking, inter alia, declarations that: (i) the board meeting on 17 April 1990 and resolutions passed were invalid; (ii) the status quo of the shareholders before 17 April 1990 be maintained; and (iii) the sale of the land to the intervener was null and void. The intervener resisted the plaintiffs' application in (iii) by relying on the doctrine that it was a bona fide purchaser for value and had no notice of the dispute between the shareholders of the company, and even if it had notice, it was not bound to inquire into the internal affairs of the company.

Held, allowing the plaintiffs' application:

(1) The notice of the board meeting to be held on 17 April 1990 was not dated or signed as required under art 110 of the articles of the company. Further, the notice and the agenda were not received by the first three plaintiffs who were the directors at the material time. It follows that the meeting was ineffective and the resolutions passed were invalid.

(2) However, power is given to the court to make a validating order in respect of such irregularities under s 355 of the Companies Act 1965, either on the application of the defendants or on its own motion. There had been no such application by the defendants and, in the absence of proper notice and the non-receipt of it by the three plaintiffs that resulted in the passing of resolutions to their prejudice, it was not proper for the court to make a validating order on its own motion. Therefore, the directors' meeting on 17 April 1990 and the resolutions passed were invalid.

(3) The conduct of the chairman of the intervener before and after the execution of the sale and purchase agreement ('the SPA') in respect of the land clearly showed that the intervener was not a bona fide purchaser. It did not deal in good faith with the company as it had notice of the irregularities in the affairs of the company and accordingly, the SPA was null and void. It was open to the intervener to take action against the second to ninth defendants personally for recovery of the money paid.

(4) All subsequent meetings of the directors and resolutions passed following from the directors' meeting on 17 April 1990 were invalid. The SPA and the memoranda of transfer in respect of the land were also invalid and of no effect on the company. The common seal, cash books, bank statements, vouchers, all cheque books and files relating the company and six original documents of titles to the land were to be returned to the plaintiffs.

(5) The status quo of the shareholders before 17 April 1990 was maintained and the plaintiffs were at liberty to apply for rectification of the share register of the company with the Registrar of Companies.

A **[Bahasa Malaysia summary**

Defendan pertama ('syarikat itu') telah diperbadankan sebagai suatu syarikat keluarga pada tahun 1962 dengan pejabat berdaftarnya di Sibu, Sarawak. Ia mempunyai modal dibenarkan sebanyak RM2.5 juta dengan 25,000 saham bernilai RM100 setiap satu dan memiliki
B enam bidang tanah ('tanah itu') di mukim Jeram Batu, Pontian. Plaintif pertama dan defendan kedua adalah pembeli awal saham syarikat itu, dan merupakan suami dan isteri, masing-masing. Defendan ketiga, keempat, kelima, keenam, ketujuh dan kelapan adalah anak plaintif pertama dan defendan kedua. Defendan
C kesembilan adalah isteri kepada defendan keempat. Rahimah bte Dollah ('plaintif kedua') adalah isteri kedua kepada plaintif pertama yang telah mengahwininya mengikut upacara Islam pada 26 Mei 1990. Plaintif ketiga dan keempat masing-masing adalah adik lelaki dan adik perempuan plaintif pertama. Tanah itu pada mulanya dimiliki oleh plaintiff pertama yang pada 1973 telah memindahmiliknya kepada
D syarikat itu. Pertikaian telah timbul pada awal tahun 1990 di antara plaintif pertama dan defendan kedua hingga kelapan berikutan penglibatan plaintiff pertama dan seterusnya perkahwinannya kepada plaintif kedua. Pada suatu mesyuarat lembaga yang diadakan pada 17 April 1990, defendan-defendan telah meluluskan suatu resolusi
E yang mengisytiharkan bahawa sijil saham kepunyaan plaintif kedua adalah terbatal dan tidak sah dan meluluskan pemindahan saham itu kepada defendan kesembilan. Lembaga pengarah juga meluluskan suatu resolusi pada 26 Mei 1990 yang membenarkan penjualan tanah itu. Seterusnya, tanah itu telah dijual untuk RM4.8 juta kepada Pekan Nenas Industries Sdn Bhd ('pencelah itu'). Bagaimanapun,
F pindahmilik tanah itu tidak dapat dilaksanakan kerana plaintif pertama telah berjaya memperolehi satu injunksi interim terhadap pindahmilik tersebut.

Plaintif-plaintif kemudiannya membawa tindakan ini menuntut, antara lain, deklarasi bahawa: (i) mesyuarat lembaga yang diadakan
G pada 17 April 1990 dan resolusi-resolusi yang diluluskan adalah tidak sah; (ii) status quo pemegang saham sebelum 17 April 1990 dikekalkan; dan (iii) penjualan tanah itu kepada pencelah adalah terbatal dan tidak sah. Pencelah tersebut menentang permohonan plaintif dalam (iii) dengan bergantung pada doktrin bahawa ianya adalah pembeli bona fide dengan nilai dan tidak tahu tentang
H pertikaian di antara pemegang-pemegang saham syarikat itu, dan sekalipun ia tahu, ia tidak terikat untuk menyiasat tentang urusan dalaman syarikat itu.

Diputuskan, membenarkan permohonan plaintif:

I (1) Notis tentang mesyuarat lembaga yang ditetapkan untuk 17 April 1990 tidak bertarikh atau bertandatangan sepertimana yang diperlukan di bawah perkara 110 perkara-perkara persatuan

syarikat itu. Lagipun, notis dan agenda itu tidak diterima oleh tiga plaintif yang pertama yang merupakan pengarah pada masa yang material. Ini bererti bahawa mesyuarat itu adalah tidak berkesan dan resolusi yang diluluskan adalah tidak sah.

(2) Walau bagaimanapun, kuasa diberikan kepada mahkamah untuk membuat satu perintah pengesahan berkaitan dengan luar aturan sedemikian di bawah s 355 Akta Syarikat 1965, sama ada atas permohonan defendan ataupun atas usulnya sendiri. Tidak terdapat permohonan sedemikian oleh defendan dan, dengan ketiadaan notis yang betul dan penerimaannya oleh tiga plaintif itu yang mengakibatkan terlulusnya resolusi yang menjejaskan hak mereka, adalah tidak betul untuk mahkamah membuat perintah pengesahan atas usulnya sendiri. Oleh itu, mesyuarat pengarah pada 17 April 1990 dan resolusi-resolusi yang diluluskan adalah tidak sah.

(3) Kelakuan pengerusi pencelah itu sebelum dan selepas pelaksanaan perjanjian jualbeli ('perjanjian itu') berkenaan dengan tanah itu jelas menunjukkan bahawa pencelah itu bukanlah pembeli bona fide. Ia tidak berurus dengan suci hati dengan syarikat tersebut kerana ia telah mendapat notis mengenai luar aturan dalam urusan syarikat itu dan dengan demikian, perjanjian itu adalah batal dan tidak sah. Ianya terbuka kepada pencelah itu untuk mengambil tindakan terhadap defendan kedua hingga kesembilan secara peribadi untuk mendapatkan balik wang yang dibayar itu.

(4) Semua mesyuarat pengarah seterusnya dan resolusi-resolusi yang diluluskan berikutan mesyuarat pengarah pada 17 April 1990 juga adalah tidak sah. Perjanjian itu dan memoranda pindahmilik berkenaan dengan tanah itu juga adalah tidak sah dan tidak berkesan ke atas syarikat itu. Meterai rasmi, buku tunai, penyata bank, baucar, semua buku cek dan fail berkaitan dengan syarikat itu dan enam dokumen hakmilik asal tanah itu dikehendaki dipulangkan kepada plaintif-plaintif.

(5) Status quo pemegang saham sebelum 17 April 1990 adalah dikekalkan dan plaintif-plaintif adalah bebas untuk membuat permohonan untuk pindaan daftar saham syarikat itu dengan Pendaftar Syarikat.]

[*Editorial Note*: The defendants and intervener have appealed to the Court of Appeal vide Civil Appeal No J02–35–95 and Civil Appeal No J–02–34–95, respectively.]

Notes

For cases on irregularities in proceedings, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 149–151, 169–171, 173–179.

For a case on rectification of share register, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) para 346.

Cases referred to

First Nominee (Pte) Ltd v New Kok Ann Realty Sdn Bhd & Anor [1983] 2 MLJ 76 (folld)

Rolled Steel Products (Holdings) Ltd v British Steel Corp & Ors [1985] 3 All ER 52; [1985] 2 WLR 908 (folld)

Royal British Bank v Turquand [1843–60] All ER Rep 435; 119 ER 886 (folld)

Legislation referred to

Companies Act 1965 s 355

Rules of the High Court O 15 rr 6(2)(b), 8

L Parthiban (*PK Nathan* with him) (*L Parthiban & Associates*) for the plaintiffs.

Teh Poh Teik (*Teh Poh Teik & Co*) for the defendants.

Harcharan Singh (*Watson Peters* with him) (*Harcharan & Peters*) for the intervener.

Cur Adv Vult

Haidar J: At the outset of the hearing of this suit the following documents, as agreed by the parties, were produced and marked accordingly:

Bundle of pleadings	—	P1
Ikatan afidavit	—	P2
Ikatan dokumen plaintif	—	P3
Ikatan dokumen defendan	—	D1
Ikatan pencelah	—	PE1

This suit was instituted by the plaintiffs as a result of disputes in early 1990 between the first plaintiff and the second to eighth defendants arising out of the first plaintiff's involvement with and subsequent marriage to Rahimah bte Dollah ('the second plaintiff'). As a result, each side sought to take control of the first defendant company vide various board meetings and the annual/extraordinary general meetings held by each side.

After gaining control of the first defendant company, the purported board of directors of the first defendant company vide resolution on 26 May 1990 purportedly authorized the second, third and fifth defendants to sell by public auction or private treaty six pieces of land referred to in the minutes (see p 10 of D1). Subsequently, the six pieces of land were sold for RM4.8m to Pekan Nenas Industries Sdn Bhd and the sum of RM4.8m was paid and received in full. However, the transfer of the six pieces of land could not be effected as the first plaintiff had successfully obtained an interim injunction against the said transfer until the dispute between the parties was resolved. I will deal with the action to intervene in the proceedings by Pekan Nenas Industries Sdn Bhd and its interests later in my judgment.

The first defendant company (Aik Ming (M) Sdn Bhd) was incorporated as a family company with the first plaintiff and the second defendant as the initial subscribers, they being husband and wife, respectively. The third, fourth, fifth, sixth, seventh and eighth defendants are the children of the first plaintiff and the second defendant. The ninth defendant is the wife of the fourth defendant. The second plaintiff is the second wife of the first plaintiff having married him according to Muslim rites on 26 May 1990 (see p 101 of P3). The third and fourth plaintiffs are the brother and sister of the first plaintiff, respectively.

The first defendant company's registered office is in Sibu, Sarawak. It was set up in 1962 (see p 10 of P3). It has an authorized capital of RM2.5m with 25,000 shares of RM100 each. It has six pieces of land in the mukim of Jeram Batu, district of Pontian, comprising:

(1) MG 273, Lot 773;
(2) MG 272, Lot 877;
(3) MG 275, Lot 875;
(4) MG 276, Lot 876;
(5) MG 274, Lot 874; and
(6) Geran 16210, Lot 132,

(hereinafter collectively referred to as 'the said lands'.)

The said lands originally belonged to the first plaintiff. In 1973, the first plaintiff transferred the said lands to the first defendant company for RM10,000 an acre, the total price being RM366,250 (see pp 107 and 108 of P3). According to the first plaintiff, thereafter when his children came of age he would transfer some shares into their names and his children did not pay any money either to him or to the first defendant company. However, he got them to sign blank transfer forms back to him and he kept their share certificates.

Shareholding of first defendant company on or before 17 April 1990 (before the alleged takeover):

		No of shares
1	Chang Ching Chuen (first plaintiff)	2
2	Rahimah bte Dollah (second plaintiff)	11,658
3	Chang Ching Hong (third plaintiff)	1,100
4	Yap Poh Eng (f) (second defendant)	40
5	Peter Chang Chee Chi (third defendant)	100
6	Paul Chang Chee Cheng (fourth defendant)	100
7	Amy Chang Chee Chin (f) (fifth defendant)	3,000
8	Pearl Chang Chee Siang (f) (sixth defendant)	3,000
9	Jenny Chang Chee Ning (f) (seventh defendant)	3,000
10	Catherine Chang Chee Jian (f) (eighth defendant)	3,000
		25,000

Shareholding of first defendant company after April 1990 (after the alleged takeover):

		No of shares
1	Chang Ching Chuen (first plaintiff)	2
2	Rahimah bte Dollah (second plaintiff)	nil
3	Chang Ching Hong (third plaintiff)	1,100
4	Tiong Kim Siong (fourth plaintiff)	1
5	Yap Poh Eng (f) (second defendant)	39
6	Peter Chang Chee Chi (third defendant)	100
7	Paul Chang Chee Cheng (fourth defendant)	100
8	Amy Chang Chee Chin (f) (fifth defendant)	142
9	Pearl Chang Chee Siang (f) (sixth defendant)	3,000
10	Jenny Chang Chee Ning (f) (seventh defendant)	3,000
11	Catherine Chang Chee Jian (f) (eighth defendant)	3,000
12	Ong Li Mei (f) (ninth defendant)	14,516
		25,000

In their statement of claim, the plaintiffs are seeking various prayers from the court but after the hearing of this suit, the plaintiffs withdrew some of the prayers, especially in respect of the alleged meetings subsequently held in Sibu to counter the resolutions passed by the second, third, fourth, fifth and ninth defendants. Be that as it may, in considering this suit, the first issue for the court to consider is in respect of the alleged meeting of the board of directors on 17 April 1990.

Meeting of the Board of Directors on 17 April 1990 in Singapore

At this board meeting attended by the second and third defendants, it was resolved:

1 That the share certificate Nos 55, 56, 79, 80, 83, 84, 85, 86, 87, 88, 90, 91, 92, 93, 94, 95, 96 and 97 be and are hereby declared null and void.

2 That the following transfer of shares in the company be and they are hereby approved and that the common seal of the company be affixed to the new certificates.

Serial no of old shares	Transferor	Transferee	Serial no of new shares
55, 56, 79 and 80	Amy Chang Chee Chin	Ong Li Mei	99
83, 84, 85, 86, 87, 88, 91 and 92	Peter Chang Chee Chi	Ong Li Mei	101
90, 93, 94, 95, 96 and 97	Paul Chang Chee Cheng	Ong Li Mei	100

3 That pursuant to art 69(a), Rahimah bte Dollah (I/C No 5814759) of Bt 26 Jalan Pontian, Pekan Nenas, Johor, Malaysia shall cease to be a director of the company with effect from 17 April 1990.

4 That pursuant to art 81, the following be and they are hereby appointed directors of the company with effect from 17 April 1990:

Paul Chang Chee Cheng
Amy Chang Chee Chin
Ong Li Mei

Before 17 April 1990, the directors of the first defendant company were:

(1) Chang Ching Chuen;
(2) Rahimah bte Dollah;
(3) Yap Poh Eng;
(4) Chang Ching Hong; and
(5) Peter Chang Chee Chi.

The second defendant, who is also the secretary, claimed that a notice of the meeting of the board to be held on 17 April 1990 (see p 1 of D1) was issued to all the directors. However, the first plaintiff (PW1), second plaintiff (PW2) and third plaintiff (PW3) gave evidence that each of them had not received the notice referred to. Quite apart from the non-receipt of the said notice by PW1, PW2 and PW3, a look at the notice as on p 1 of D1 clearly shows that the notice was not dated and signed by the secretary (ie DW3). Neither was the signature even printed as provided by art 110. According to DW3, she did sign and put a date on the said notice and the notice as in p 1 of D1 was a file copy only and it was not signed and dated or even printed. Apart from her oral explanation, she did not adduce any other evidence to support her oral explanation about the notice (p 1 of D1) that was undated and unsigned. Now the question for me to consider is whether her explanation can be accepted by the court.

It is clear by art 110 (p 10 of P3) that the signature to any notice to be given by the first defendant company may be written or printed. I am of the view that it is rather difficult to accept her oral explanation as it would appear to be rather odd for her to sign on all the copies except the file copy! In fact, she needed only to print her name on the file copy of the notice to meet the requirement of art 110. In the circumstances, the notice at p 1 of D1 could not, in my view, constitute a proper notice. However, even assuming that the notice was duly dated and signed as claimed by DW3, the next issue I have to consider is whether the notice had been duly served on all the directors.

According to art 89, the secretary shall summon a meeting of the directors by notice served upon the several directors. Article 107 states:

> Any notice sent by post shall be deemed to have been served on the day after the envelope or wrapper containing the same is posted and in proving such service it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and put in the post office box.

PW1, PW2 and PW3 who were the directors at the material time, in their evidence, denied receipt of the notice and the agenda (see p 2 of D1) whereas DW2 gave evidence that he did receive the notice and the agenda

(pp 1 and 2 of D1). DW2 stopped there without producing the relevant documents to show that the notice and the agenda were in fact issued and sent to the directors for the meeting on 17 April 1990. If the notice and the agenda had been sent to all the directors, I am of the view that there could be no reason for PW1, PW2 and PW3 not to attend the board meeting in view of the agenda to be discussed and passed at the board's meeting. In fact, it is the more reason for PW1, PW2 and PW3 to attend the said board meeting as they could very well defeat the resolutions proposed thereat in view of their majority shareholding in the first defendant company at the material time. In view of the denial of the receipt of the notice and the agenda by PW1, PW2 and PW3, and I do not see any good reason to disbelieve them, it is for the defendants to show that such notice and agenda were served on PW1, PW2 and PW3. In fact, the defendants failed to so prove and, interestingly enough, their counsel did not press hard on this issue when cross-examining PW1, PW2 and PW3.

As I am of the view that the notice was undated and unsigned and for that matter not even printed, it cannot therefore constitute a valid notice and further hold that the notice and the agenda were not received by PW1, PW2 and PW3, it follows therefore that the board of directors meeting on 17 April 1990 was ineffective and the resolutions passed were invalid. However, power is given to the court to make a validating order in respect of such irregularities under s 355 of the Companies Act 1965, either on the application of the defendants or on its own motion. There has been no such application by the defendants. The next question is whether the court on its own motion should exercise such power. The absence of proper notice and, in any event, the non-receipt of it by PW1, PW2 and PW3 in this case that resulted in the passing of resolutions to the prejudice of PW1, PW2 and PW3 to my mind caused injustice to them and in the circumstances it is not proper for the court to make a validating order and hence, I decline to make such an order. (See *First Nominee (Pte) Ltd v New Kok Ann Realty Sdn Bhd & Anor* [1983] 2 MLJ 76.)

As I rule that the board of directors meeting of 17 April 1990 was invalid and therefore of no effect and similarly the resolutions passed thereunder, it follows that the subsequent meetings of the board of directors where the purported new directors took part in the subsequent meetings could not possibly be valid and similarly also in respect of the various resolutions passed thereunder. In my view, the status quo of the shareholding prior to 17 April 1990 should be maintained.

Intervener's case

It is not disputed that Pekan Nenas Industries Sdn Bhd intervened principally for the purpose of setting aside the injunctive order obtained by PW1 (see encl 19). Alternatively, the intervener prayed for the variation of the injunctive order to present for registration the memorandum of transfer of the said lands in favour of it. The application to intervene, by consent, was allowed by the learned judge then (see p 2 of encl 51). Subsequently, upon hearing the application of the intervener as well as the defendants to

set aside the injunctive order and/or variation of it, the learned judge in a written judgment dated 21 April 1992 dismissed the application with costs. A

In its application to intervene (encl 19), it would seem clear that the intervener applied for leave to, firstly, intervene in these proceedings and secondly, in the event leave is granted, to apply for an order to set aside the injunction and/or a variation of the injunctive order obtained by PW1. However, the learned judge hearing the application of the intervener did not make a specific order that the intervener be named as a party to these proceedings as provided under O 15 r 6(2)(b) of the Rules of the High Court 1980 ('the RHC') and, as a result, consequential actions under O 15 r 8 of the RHC were not taken. Be that as it may, it would appear that in view of prayer (p) of the statement of claim of the plaintiffs seeking a declaration that the sale of the said lands to any third party (ie the intervener) is null and void and of no effect on the first defendant company, the interests of the intervener vis-à-vis the sale of the said lands would be affected and, in my view, it would be just and convenient to determine as between the intervener and the defendants as well as between the plaintiffs and the defendants as to the issue of the sale of the said lands. In any event, the plaintiffs did not raise the issue of the status of the intervener at the time of the hearing of this suit. Therefore, the intervener should be allowed to be heard. B C D E

The intervener, in what I would say trying to resist the prayer sought by the plaintiffs for a declaration that the sale and purchase agreement between it and the first defendant company be declared null and void and of no effect, relied on the doctrine that it is a bona fide purchaser for value and had no notice of the dispute between the shareholders/directors of the first defendant company, and even if it had notice, it is not bound to inquire into the internal affairs of the first defendant company. Further, the counsel for the intervener contended that the issue of the conspiracy of the intervener with the second to ninth defendants and the contention that the intervener was not a bona fide purchaser could not be relied on by the plaintiffs as they were not so pleaded by the plaintiffs. As the intervener was not ordered to be made a party, such contention cannot in the circumstances be accepted as no consequential action was taken under O 15 r 8 of the RHC. Hence, it is just and proper that all evidence available should be considered by the court in determining the claim of the intervener that it is a bona fide purchaser and that it had no notice of the dispute between the shareholders/directors of the first defendant company. F G H

It is true that the principle is that a person dealing with a company does not need to enquire into the regularity in the internal affairs and proceedings of the company and may assume that all is being done regularly. (See *Royal British Bank v Turquand* [1843–60] All ER Rep 435; 119 ER 886.) However, this principle is not absolute and unqualified when Slade LJ in *Rolled Steel Products (Holdings) Ltd v British Steel Corp & Ors* [1985] 3 All ER 52 at p 77; [1985] 2 WLR 908 at p 936 said: I

A This contention might well have been unanswerable if the rule in *Royal British Bank v Turquand* were an absolute and unqualified rule of law, applicable in all circumstances. But, as the statement of the rule quoted above indicates, it is not. It is a rule which only applies in favour of persons dealing with the company in good faith. If such persons have notice of the relevant irregularity, they cannot rely on the rule.

B The intervener entered into a sale and purchase agreement ('the SPA') with the first defendant company in respect of the said lands on 3 December 1990 (see p 24 of PE1). It is then necessary for me to consider the facts that led to the execution of the SPA by the intervener as to whether it is a bona fide purchaser and had knowledge of the irregularity of the internal C affairs of the first defendant company. The intervener's evidence was given by Dato' Tan Eng Boon, the chairman of the intervener company (IW1).

According to IW1, he dealt with a broker named Mr Quek in respect of the sale of the said lands through one Mr Lai. The price for the said lands was initially RM6m but after negotiations with the 'vendors' through D the telephone, it was agreed at RM4.8m. Thereafter, he instructed his manager, one Mr Phang, to pay RM100,000 in cash in Singapore on 26 October 1990 for the option. As regards the deposit of 10%, it was agreed at a figure of RM668,000 after negotiations between the parties as, according to IW1, the figure '668' means 'prosperous all the way'. After the payment of RM100,000, the intervener appointed Messrs KH Choo as E its solicitors. Interestingly enough, the intervener chose not to call Mr Quek or Mr Lai as its witness to support the bona fides of its transaction with DW2 and DW3 and that it had no knowledge of the irregularity in the first defendant company. Would not the evidence of Mr Quek and/or Mr Lai be relevant to support the claim of the intervener? No reasons were F advanced by the intervener why Mr Quek and/or Mr Lai were not called. In that event, an adverse inference against the intervener should be drawn.

According to Mr KH Choo (PW5), who acted for the intervener, a search was made with the land administrator in respect of the said lands sometime in October 1990 through his clerk and there was no encumbrance then. PW5 claimed that he came to know of the caveat sometime in G November 1990 (referring to the caveat dated 6 September 1990 as on p 38 of P3 and I shall hereinafter refer to it as 'the first caveat'). No particulars of the search were taken down. I have my reservations whether such a search was indeed carried out by PW5's firm as it is clear that the first caveat was filed in September 1990 as the record showed and if H indeed the search was made, the first caveat would have been disclosed. Be that as it may, PW5 disclosed to IW1 the first caveat sometime in November 1990 when he allegedly came to know of it. From the contents of the first caveat that was filed, it clearly showed that it was filed by PW1 in his capacity as the chairman and managing director of the first defendant company and the ground was stated: 'The title deeds of the said lands have I been lost or mislaid or taken away by unauthorized person or persons.'

In spite of the knowledge of the first caveat and the person in the name of PW1 purportedly acting for the first defendant company as

chairman and managing director, IW1 chose not to contact PW1 about the caveat. Even though his solicitor, PW5, said that the first caveat could be removed, it should at least have dawned upon him to be cautious and alert in dealing with the purchase of the said lands as the ground stated in support of the first caveat revealed at least 'an element of theft'. It is only appropriate that IW1 should contact PW1 regarding the first caveat filed and knowing of the position of PW1 as disclosed therein, would not it be prudent on his part to not only deal with DW2 and DW3 but with PW1 as well? However, throwing caution to the wind, IW1 decided to proceed with the execution of the SPA on 3 December 1990 knowing full well of the encumbrance, ie the first caveat. Though the first caveat could be easily removed as claimed by PW5, is it not also prudent on the part of IW1 to see that the first caveat is removed first before executing the SPA thereby without getting the intervener involved deeply in the transaction with high risks especially when millions of dollars are involved. At the very least, there should be a provision in relation to the removal of the first caveat inserted in the SPA to protect the interests of the intervener. In any event, the SPA stipulates that the sale of the said lands was free from encumbrance which was not true. In spite of the knowledge of the first caveat which means that there was an encumbrance on the said lands, the intervener chose to proceed with the execution of the SPA. The pertinent question to ask is — why the hurry to execute the SPA? The irresistable and logical conclusion is that the intervener was getting a good deal and DW2 and DW3 and the other defendants were prepared to sell the said lands quickly at a cheaper price in order to deprive the plaintiffs of the benefits of the sale of the said lands — with the co-operation of IW1! It is rather surprising that the intervener was even allowed to take possession of the said lands and expended considerable sums of money on them even though the sale was not completed yet!

Next, after the execution of the SPA and before the sum of S$2,652,744 in cash was paid in Singapore on 15 March 1991, IW1 knew of another caveat filed on 19 December 1990 ('the second caveat'). PW5 informed IW1 of the second caveat and also the solicitors acting for the purported vendors. In spite of the knowledge of the caveats, the intervener's solicitors forwarded the balance sum of RM4,132,000 to the solicitors purportedly acting for the first defendant company and the said sum was returned subsequently and, in turn, PW5 returned the money to the intervener. Instead of aborting the sale and asking for the refund of the deposit money, IW1 decided to go on his own to proceed with the completion of the sale in spite of knowing the 'danger signals' and thought it fit to pay a sum of S$2,652,744 (equivalent to RM4,132,000) in cash in Singapore. No doubt a receipt was obtained but then there would be a danger that the money might not go into the coffers of the first defendant company and this had been proven true when DW3 admitted that the money was loaned to the shareholders. It could very well be argued that it should not be the concern of the intervener as to how the money was utilized but then it showed the conduct of the intervener as to its claim that

A it was a bona fide purchaser and had no notice of the irregularity in the affairs of the first defendant company.

The statutory declaration in support of the second caveat clearly showed the internal dispute in the management of the first defendant company and I quote:

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> In view of the recent disputes between me and other shareholders, I have good reasons to believe that the other shareholders in the said company are making attempts to dispose of the landed assets of the said company without my knowledge, consent and approval.

I see no good reason therefore for the intervener to proceed with the final C payment of the purchase price of the said lands other than to proceed with all haste in tandem with the second to ninth defendants in the hope of getting the titles registered in its name and thereby getting indefeasible titles. As I said earlier, the speed with which the intervener and the defendants finalized the sale of the said lands with the co-operation of their solicitors was purposely to deprive the plaintiffs of their interests. If IW1 D had contacted PW1, he knew full well that the transaction would in all probability be aborted and hence, with the co-operation of DW2 and DW3, tried to get the titles registered in the intervener company's name, thereby hoping to defeat the plaintiffs' claim. This is further borne out by the fact that the intervener even tried to register the transfer of the said E lands in the face of an injunctive order.

I am of the opinion that the conduct of IW1 before as well as after the execution of the SPA would seem clearly to show that the intervener was not a bona fide purchaser who acted without the knowledge of the irregularity in the affairs of the first defendant company. In the F circumstances, the intervener, in my view, cannot rely on the authority of *Turquand*'s case citations as it was not dealing in good faith with the first defendant company as it had notice of the irregularity and I accordingly declare the SPA null and void and of no effect. It is open to the intervener to take action against the second to ninth defendants personally for recovery of the money paid and the damages, if any, as they were the ones who G pocketed the money.

Accordingly, I would make the following orders that:

(1) the directors' meeting of the first defendant company in Singapore on 17 April 1990 and the resolutions passed thereunder are invalid, null and void and of no effect;

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(2) all subsequent meetings of the directors and the resolutions passed thereunder following from the directors' meeting on 17 April 1990 are similarly invalid, null and void and of no effect;

(3) the status quo of the shareholders before 17 April 1990 be maintained; and

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(4) the SPA and the memorandum of transfers in respect of the said lands are invalid, null and void and of no effect on the first defendant company.

I would, as a result, also make the following consequential orders that:

(1) the plaintiffs be at liberty to apply for rectification of the share register of the first defendant company with the Registrar of Companies;

(2) the interveners and/or the defendants forthwith return to the plaintiffs the six original documents of titles of the said lands;

(3) the second, third, fourth, fifth and ninth defendants do forthwith return to the plaintiffs the common seal, cash books, bank statements, vouchers, all cheque books and all files relating to the general correspondence register of share book of the first defendant company; and

(4) damages to be assessed by the deputy registrar on a date to be fixed by him.

I also order that the second to ninth defendants and the intervener do pay the costs of the proceedings to the plaintiffs.

Order accordingly.

Reported by Sarojah Arianayagam